SUPPLEMENT

TO THE

ESSAY ON SURNAMES.

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TO AN

ESSAY ON SURNAMES,

AND THE

Rules of Law affecting their Change.

WITH

COMMENTS ON THE SPEECHES DELIVERED IN THE HOUSE OF COMMONS BY SIR G. GREY, BART., AND THE SOLICITOR-GENERAL.

By T. F. Thomas

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THE following letters were, among others, ordered to be printed by the House of Commons, March 12, 1863:

[*Parliamentary Paper No.* 96.]

Clytha, near Usk, Monmouthshire,
November 17, 1862.

MY LORD,—Lord Llanover, the Lord-Lieutenant of this county, by a letter dated August 14th, 1862, officially informed your Lordship that I had assumed the name of "Herbert," and that my former Surname of "Jones" remained unaltered on the Commission of the Peace of this county. This letter, addressed to your Lordship, was sent by the Clerk of the Peace of this county for publication in various newspapers, by the avowed direction of the Lord-Lieutenant.

I desire very respectfully to request your Lordship to direct that, at a convenient time, the necessary alteration consequent on my change of Surname may be made in the Commission of the Peace.

Under the name of "William Jones" I have been on the Commission of the Peace for very many years, and I have never yet taken out a writ of *dedimus potestatem;* but, as all the names on the Commission of the Peace are called over aloud at the assizes, I am desirous I should, in future, be called by the name by which I am now known, and which has become my only legal name.

It is not unusual for the names of gentlemen, either of high rank or of property in a county, to be for many years on the Commission of the Peace without their taking out a *dedimus potestatem*, and there is no known disadvantage in the practice.

At all events, so long as I am one of the persons included in the Commission of the Peace, I desire to be publicly named by the only name I am now known by and which has become my only legal name.

I may inform your Lordship that the adoption by my nephew, Mr Herbert of Llanarth (the son-in-law of Lord Llanover), of the name of "Herbert," was sanctioned by a Royal licence; but that when I myself was desirous to obtain a similar licence I was told by authority (though not in answer to a direct application to the Home Office) that the rules of the Home Office did not allow it to be granted to me. I subsequently assumed the name of "Herbert;" and, in order to publish to the world the evidence of the fact, and of the good faith which influenced me, I enrolled a deed in the Court of Chancery in order to record my change of Surname, and I announced it by public advertisement.

I was informed by my legal advisers, that by the performance of these acts I had fulfilled the duty I owed to the public, and that I had complied with every condition which the law imposes when a change of Surname is made.

Since I have assumed the name of "Herbert," the Lord-Lieutenant of this county has refused to recognise me by this name, and he has publicly alleged that I had violated her Majesty's prerogative in not having obtained a Royal licence.

If the law required me to obtain a licence on the change of my name I have erred; but if the law does not require it, or if, as an act of official courtesy it is not obtainable (however legally objectionable when insisted on, if not necessary, as a colourable demand for fees on the performance of a legal act), I humbly submit to your Lordship my request, to direct the same steps to be taken, in order to cause a change of my name on the Commission of the Peace to be made, as are usually directed to be taken when the Lord-Lieutenant of any county officially notifies to the Lord Chancellor, for the time being, the fact of the change of Surname of any gentleman, named on any Commission of the Peace, having been sanctioned by a Royal licence.

I have, &c.,

(Signed) WILLIAM HERBERT.

To the Right Hon. the LORD CHANCELLOR,
34 Belgrave square, London.

November 25, 1862.

SIR,—The Lord Chancellor has directed me to acknowledge the receipt of your letter dated the 17th instant, and to express his regret that he cannot, consistently with what he deems to be his duty, comply with your application. As this is an official communication, the Lord Chancellor is obliged, for consistency, to

use that address by which you appear upon the Commission of the Peace; otherwise, in courtesy, he would have been glad to have addressed you by the name you wish in future to bear.

I am, &c.

(Signed) HALLYBURTON CAMPBELL,
Secretary of Commissions.

WILLIAM JONES, Esq., of Clytha.

Clytha, near Usk, Monmouthshire,
November 26, 1862.

MY LORD,—My friend Judge Falconer, who is one of the magistrates of the county of Brecknock, has inquired, for me, what were the steps taken as respects the Commission of the Peace when those gentlemen now acting under the Commission in that county assumed new Surnames; the publication of the fact of their having changed their names having been made by Royal Licenses.

Mr Falconer tells me, and he authorises me to repeat it, that the original names of these gentlemen remain unaltered on the Commission of the Peace; but he adds, that he is well informed, on excellent authority, the clerk of assize, or his deputy at the assizes, when professedly calling over the names on the Commission of the Peace, calls these magistrates by their assumed names only.

Mr "John Parry Wilkins" appears on the Commission of the Peace, but he is called, at the assizes, by the name of Mr "John Parry de Winton;" and also the name of his son, Mr "John Jeffreys de Winton" appears on the Commission of the Peace by the name of Mr "John Jeffreys Wilkins."

Mr "John Williams" appears by this name on the same Commission of the Peace, but he is called at the assizes by the name of Mr "John Williams Vaughan."

These gentlemen are acting magistrates, except Mr John Jeffreys de Winton, now infirm, and they sign official documents by their assumed names.

Whether or not the name of Mr "Herbert" of Llanarth has been altered from that of "Jones" on the Commission of the Peace of the county of Monmouth since he changed his name, I am unable to state; or by whom, or when the alteration was made.

Under the circumstances, if this state of things represents the practice sanctioned by the precedents of the office of the Clerk of the Crown, I humbly submit that my former application to have my name distinctly changed on the Commission of the Peace of the county of Monmouth may be assented to.

When the Judges of the Courts of Common Law assent to changes of name (without the existence of any Royal licence) being entered on certain rolls of those courts, the assent is given, and could only be given, to a legal act done by the applicant. The assent is not and cannot be a personal favour, or an act of personal civility. It is the acknowledgment of a legal right, though the only mode to enforce it may sometimes be the supreme obligation on the part of judges at all times to recognise the law.

It would seem also, that the law on all occasions of a change of name defends the Royal presence from any intrusion by declaring a sign-manual to be needless except when the mere grace of the Crown relieves property from an express condition which has been imposed on it to obtain the notice of the Sovereign to a change of name. The general law most properly protects the Sovereign from claims for licences merely to sanction the assumption of Surnames when there is no other purpose in the licence.

It would also seem that all persons are exempt from demands, under colour of office, for the payment of fees, when in the absence of all conditions affecting the enjoyment of property, a new name is voluntarily assumed; estates, also, have been transferred by the judgment of the courts, on the ground of the legality and the sufficiency of the voluntary assumption of Surnames (without any Royal licence) in order to satisfy the conditional limitation of such estates, when the condition has not required the intervention of the grace of the Crown.

I therefore again very humbly submit, in the interests of truth, and, as I am assured, consistently with all deliberate judicial expressions of the law on the subject, that my name of "William Herbert," as my true and known legal name, may be permitted to be inserted in the Commission of the Peace of the county of Monmouth, and that I may consequently be hereafter called at the assizes by that name instead of by the name of "William Jones," which is no longer my known legal name.

In this case all the material facts which authorise your Lordship to interfere have been officially communicated to your Lordship by the Lord-Lieutenant.

I have, &c.

(Signed) WILLIAM HERBERT.

To the Right Hon. the LORD CHANCELLOR.

Clytha, Monmouthshire, 8 Dec., 1862.

My LORD,—I have no improper wish to intrude myself on your attention, but your Lordship's letter of 25th November, 1862,

addressed to me, is, in effect, the infliction on me and on my son of personal disabilities and personal disqualifications to hold any public office.

This decision is made without any allusion to any violation of the law on our part, and therefore I think I have a most undoubted claim to your Lordship's notice of this communication.

I have asked your Lordship to recognise what I have been informed and believe to have been a most undoubted legal act on my part in the assumption of the name of "Herbert."

Your Lordship's reply is simply that such recognition is declined. At the same time, I am informed that an entry on the Commission of the Peace is to govern the name by which I am to be personally addressed in official communications. Such an entry is, however, no exposition of the law of my case. The foundation of my application was that the entry on the Commission of the Peace no longer declares my true name, and I have shown that, in Brecknockshire at least, the official acts of certain magistrates are officially recognised by names which are not the names on the Commission of the Peace.

A change of name may in many cases contribute to the happiness and contentment, and promote the interests of many persons.

The recognition of such changes of name is not opposed to any law, and the public have an interest to sustain the general law which sanctions such changes.

If a change of name is legal, it is certainly an innocent act.

If there has been misconduct on my part, your Lordship under your authority of supervision of the magistracy, can remove my name from the Commission of the Peace, though such a step is never taken without a solemn statement of the cause and of the law which justifies it, and the opportunity of a defence being offered to answer any charge.

My change of name seems to be treated as a personal disqualification to prevent the issue of a writ of *dedimus potestatem*, if I shall apply for it; yet, if I have committed no act of misconduct I myself cannot justly be excluded from the Commission of the Peace. My son is, also, excluded from the militia by the Lord-Lieutenant. The cause of this treatment has not been officially communicated to me, though I do not affect to be ignorant of its expression in the letter of August 16, 1862, written by your Lordship's direction to Lord Llanover, and published by his Lordship.

The Crown does not confer Surnames: a Royal licence is merely a mode of publication of changes of name. The simple charge, then, which can be made against me is,—that I have not legally, or sufficiently, made known to the public my change of name. If this is so, I again appeal to your Lordship's sense of justice.

Both I myself and my son, without any reference to any law

which it is alleged we have violated, are now subject to personal disabilities and to personal disqualifications imposed on us by your Lordship and by Lord Llanover. This has been done in relation to public offices in our own county, where my family and ourselves have long lived with honour and with unstained reputation.

Failing this appeal, I shall confidently entertain the belief that the great assembly of which your Lordship and Lord Llanover are members, mindful of ancient traditions, and jealous of their own solemn obedience to the law and their guardianship of legal rights, will in the words of a memorable resolution of their house —"out of that justice of which they are dispensers against oppression and the breach of laws"—relieve me and my family from personal disabilities and disqualifications of which we have in vain sought to discover the legal justification.

I remain, &c.

(Signed) WILLIAM HERBERT.

To the Right Hon. the LORD CHANCELLOR.

[EXTRACT FROM THE 'TIMES.']

The Lord Chancellor has assented to make the necessary change of name in the Commission of the Peace of the county of Monmouth, if Mr Herbert will obtain a licence and take somebody's arms. [*Letter from the Lord Chancellor to Lord Llanover*, August 16, 1862.] What the Lord Chancellor directs to be done can only be done through Sir George Grey. The question is, whether the Lord Chancellor is aware of the danger in which Sir George Grey may place himself? In the case of *Rex* v. *Loggan and Froome* (1 *Strange*, R. 73), Dr Loggan, the Chancellor at Salisbury, and Mr Froome, the Registrar, were charged with having forced one Hollier, an executor, to prove a will in the Bishop's Court at Salisbury, which they knew had been proved in the Court of the province of Canterbury, and thereby extorted 40s. from Hollier. The defendants were found *Guilty*, and the verdict was sustained on motion in the arrest of judgment. It was held that there was no title to any fees—that Dr Loggan did not perform a judicial act; and that it was a contrivance to get money when none was due; and that the defendants had been guilty of extortion, in which act there are no accessories. In a large sense, extortion has been held to be oppression under colour or pretence of right; but the offence is in the taking of something and not in the agreement of the parties. A legal act had been done, and was complete in the Canterbury Court, and it was an act of oppression and extortion to require it to be repeated, with a payment of fees, at Salisbury, though null and of no effect.

In Mr Herbert's case he has done a legal act, and has done

all that the law required of him to do,—namely, to act in good faith, with an innocent purpose, and to give reasonably sufficient publicity to his act. By so doing his change of name was legally complete. But he is to be *forced* to go to the Home Office and pay fees on the republication of the same act, or he and his sons are to be disqualified to hold office in their own county! If at the Home Office they are refused what the Lord Chancellor desires them to ask for, the family is to suffer for an indefinite length of time penal disqualifications on account of the performance of a legal act. But suppose that Sir George Grey knows that Mr Herbert is by official authority to ask for a licence, and such a licence were granted and fees paid on it, would not Sir George Grey fall within the principle of the above judgment of the Court of King's Bench, delivered by Chief Justice Parker? If so, then the attainment of a Royal Licence by Mr Herbert is legally impossible, and there is no other course for the officials than to do as other persons must do and to be obedient to the law, and thus terminate a discreditable course of petty, personal oppression.

February 9, 1863.

SIR,—I am directed by the Lord Chancellor to inform you that a petition was some short time since presented to the Lord Chancellor and the Lord Chief Justice, &c., in conformity with the statutes, for a new Commission of Sewers to be issued for certain districts in the county of Monmouth.

The petition was signed by the Lord-Lieutenant, Lord Llanover, and Lord Tredegar, and several other gentlemen, and was transmitted by the Lord-Lieutenant in the usual manner to the Lord Chancellor.

A schedule of names of the principal gentlemen in the county of Monmouth was appended to that petition, and is referred to in the petition itself, as containing the names of the gentlemen whom the Lord-Lieutenant and the other petitioners recommended to be named as the Commissioners in such new commission.

A commission addressed to the persons named in that schedule has accordingly been duly issued by the authority and directions of the Crown.

The Lord Chancellor has lately been informed that both in the schedule appended to the petition so signed by Lord Llanover, and in the commission as issued by her Majesty, you are included under the name and description of "William Herbert of Clytha, Esquire."

The Lord Chancellor is therefore of opinion that these circumstances render your case *a peculiar and exceptional* one, and that as he cannot permit the same gentleman to be called by

two different names in two commissions from the Crown, he must alter your name in the Commission of the Peace for the county of Monmouth, and make your description therein the same as your name and description in the commission so recently issued by the order of her Majesty.

I have, &c.

(Signed) HALLYBURTON CAMPBELL,
Secretary of Commissions.

WILLIAM HERBERT, of Clytha, Esq.

[NOTE.—The Lord Chancellor has omitted to say in what respect the case is "exceptional." It is no exception to any rule of law. Surely, in his high position, he would not seek to disqualify a person to hold office if the law did not authorise it? The attempt would be oppression, and there are those who know that his Lordship is neither unkind nor disposed to act oppressively. But why is a doubtful expression used when it would have been bold, open, and creditable to have said—there had been error, misunderstanding, or mistake?]

On the 6th of January, 1863, Lord Llanover, on being informed of the intention of the Lord Chancellor to recognise the name assumed without licence, wrote a remonstrance to his Lordship, ending with this absurd and extravagant protest:

"In the present instance the *prerogative of the Crown is directly assailed*, and, as your Lordship stated in the letter which you addressed to me in August last, you could not recognise Mr Jones as entitled to be called Herbert until he had obtained the Royal licence to assume that Surname, the fact of that Surname having been improperly inserted in the list of names in a Commission of Sewers, cannot be treated as a Royal licence, designedly conferred by Sign Manual of the Sovereign.

"I consider it my duty, in my official capacity, to state these facts to your Lordship, distinctly recording my protest as the Queen's Lieutenant and as Custos Rotulorum of this county, against the continuance of that error in the commission to which I have directed your Lordship's attention."

On March 17, 1863, Mr Roebuck, M.P., brought the conduct of the Lord-Lieutenant of Monmouthshire and other officials under the notice of the House of Commons, on moving for certain returns relating to fees, rules, &c.,

connected with the grant of a Royal licence on a change of Surname. His argument was so complete and unanswerable, that it was necessary to reply to it by apologies to excuse the official annoyance of persons who complied with the law and declined to submit to oppression. The report of the debate, as it appeared in the *Times*, is unfortunately very erroneous, and it very imperfectly relates what was actually said in the course of the discussion. Certain officials had, in their own words, claimed the right to exclude the Herberts of Clytha from offices in their own county on account of their having changed their Surname without a Royal licence, and they insisted on imposing on this family personal disabilities on this account. They actively sought to inflict punishment without trial or argument, or the statement of any law to sustain the course they adopted. It was affirmed that whatever legality there might be in the assumption of a Surname without a licence, they were authorised to withhold certain personal privileges which, if the change of name had been published by a Royal licence, they admitted would have been conceded. For example:

The Lord-Lieutenant of Monmouthshire, on February 24, 1862, directed Mr W. R. Herbert to be informed that in accordance with his [Lord Llanover's] promise, if he [Mr W. R. Herbert] desired it, he would submit his name for approval for an ensigncy in the Royal Monmouth Militia, but that he could not submit a name assumed without the Royal licence and authority.

On August 16, 1862, the Lord Chancellor stated that when Mr W. Herbert, whose name was on the Commission of the Peace of the county of Monmouth as Mr W. Jones,

"had obtained a Royal licence to assume and bear the name and arms of Herbert, he would direct the alteration of his name to be made in the Commission of the Peace."

The reason given was, not that what had been done—so far as it related to the assumption of the particular name—was objectionable, but that the form or mode of assuming the name was not the form or mode which they approved of. It was not before them to consider whether, under the circumstances, if even what they desired to enforce were done, some official persons—within the principle of the case of *Rex* v. *Loggan* and *Froome* [1, *Strange Rep.* 73]—might not be guilty of extortion in enforcing assent or compliance to the mode of proceeding preferred, after the act of assuming the name was already complete and legally sufficient. Regarding only one very imperfect aspect of the case, they came to a conclusion which could not fail to be held to be erroneous whenever it should be impartially discussed.

The Solicitor-General is reported to have said: "There is no law forbidding a man to change his name, but there was also no law which compelled his neighbour to acknowledge him under the name he might assume."—"In the late case of an attorney, the Court of Queen's Bench, seeing nothing to the contrary, and being told by the attorney that he intended to use his new Surname in future, thought it right—as it was a case in which a man would probably put his name on a brass-plate on his door and be invariably known by his new name—to grant the application; but in granting the very last application of this kind, the Lord Chief Justice Cockburn expressly guarded himself against laying down the rule, that a man had a legal right to call upon the Court

to alter his name on the rolls. He said, the Court did it for 'convenience.' * There was no law on the subject, but when there appeared to be nothing arbitrary or improper, and when there was no encroachment on the feelings and rights of others, then it was courteous to accede to the wish of a person who might desire to change his name. There was, however, no principle of law that any person occupying an official position was bound to recognise a capricious or arbitrary assumption of names by persons who had no right to them, either by descent or by the inheritance of property."

This proposition of the Solicitor-General is utterly untenable as a *general* proposition, though it may be affirmed as a *particular* one. If he had said, *in some cases*, and on some occasions, officials are not bound to recognise changes of name, he would have been correct, and then, in the particular case in question, it would have been necessary to have shown that any discretion in abstaining from the recognition of the name was properly and discreetly exercised; if, indeed, it were a case in which it ought not to have been most willingly and freely exercised by immediate recognition. *Discretio est scire per legem quid sit justum.* It was not alleged, and it could not with truth have

* The following is a list of the names of some Attorneys in the Law List: Quarrel, Punchon, Goe, Seagoe, Stokoe, Snook, Stark, Square, Thick, Tuck, Stable, Atter, Diggles, Fitter, Babb, Bean, Bore, Boggie, Bouts, Bugg, Cock, Cram, Cream, Dainty, Drabble, Fear, Gamon, Gem, Gimlette, Ginn, Glubbe, Gudgeon, Last, Leaf, Luck, Mole, Neck, Onions, Papps, Press, Star, Dibb, Dimbleby, Dodge, Dufty, Flook, Pike, Toy, Twist, Twigg. Amidst thousands some men might extinguish all reflections on their name by rare abilities, but not so as regards men of ordinary capacity.

been said, that there had been any encroachment on the feelings or rights of others, or that the act done was in any respect improper. The above extracts from the letters of Lord Llanover and of the Lord Chancellor merely refer to the manner of assuming the name, and there was no objection, and there could be none, to the assumption of the particular name which had been published and adopted without publication by a licence.

The case in the Court of Queen's Bench, referred to by the Solicitor-General, is reported in the New Reports, p. 88 [*Ex parte Gimlette*]—and the Court is represented to have said: "We must not be supposed to lay down any rule as to the right of any person to change his name." But in fact the Court was not called on to do so. It was asked to recognise a voluntary change of name. If it was not legal to make the change the Court could not recognise it; if there were a legal right to make the change it could not refuse to recognise it. Only three out of many numerous cases, formerly decided [and all to the same effect] were cited, and the rule of law on the subject, which seemed to be unknown to the Court, and which it could not over-rule, had been especially and solemnly decided, after full argument, in the case of *Luscombe* v. *Yates* [5, Barnwell and Alderson, 555], when it was held that the law not merely permitted the change of name, but would promote the purpose for which the change was made. The act of assuming another name being legal, and an estate being dependant on its assumption, it was compulsory on the judges in the discharge of their duty [namely, the recognition of legal acts], to declare that the estate in dispute was acquired through the voluntary assumption—without any licence—

of the new name; the assumption of the particular name being a condition on which the possession of the estate depended. If the Court had expressed any rule in Gimlette's case it could not have been other than the one acted on by Lord Tenterden and other judges, which was recognised not because "it was convenient," but because it was the law. The Chief Justice, in another report, is stated, in Gimlette's case, to have said: "it appears a man may go by any name he pleases, but the public are not compelled to call him by that name." In the case of *Luscombe* v. *Yates*, however, Lord Tenterden and the other judges held that they were compelled, as judges, to notice the name which the possessor of the land in dispute had assumed by his own mere act and without a licence.

There is no legal compulsion to address a peer by his proper title, and there is no penalty, and there are no measures which can be adopted in Courts of Law to compel persons in the ordinary intercourse of life to recognise either inherited family names or the assumed names of those with whom they are permitted to communicate. This is so as regards assumed names, whether the fact of the assumption of the new name is published by a Royal licence (for a Royal licence is merely an act of publication, and does not confer a name) or is published without the aid of a Royal licence. If, however, in this statement, for the words "the ordinary intercourse of life," meaning thereby mere voluntary and social acts which may be neglected, disregarded, or passed by uncared for, however discourteous to do so, there were substituted the words "the ordinary business of life," or "in legal proceedings," then it will not be correct to say that the fact of the assumption of a Surname, either with

or without licence, can be disregarded or contested. The legal effect of the act of assuming a new name, in the absence of fraud, is the same when assumed either with or without a licence; and there is an obligation to recognise the act whenever the recognition is not purely either courteous or voluntary. For example, it was compulsory on the judges in the case of *Luscombe* v. *Yates* to recognise the assumed name—not because it was directed to be assumed, but because the assumption was itself legal. The will of the dead man could not have made the act of the living man of any avail if the law had not so enforced its recognition as to prevent the possession of the property being disturbed on account of the possessor having assumed a certain name in a way authorised by law, *i.e.*, without a licence. The name, in this case, was assumed *before* there was either descent or inheritance of property, and the case itself invalidates both the proposition expressed by the Solicitor-General and its limitations. The change of name was made without licence, in *the expectation* of getting the property, and not by reason of descent or inheritance, and the title to the property was established because the possessor bore the name at the time when the limitation took effect, *i.e.*, that he had it *before* that time by his own act. He took the name legally *before* there was any descent or inheritance, and the Court was bound to recognise the act which had been done before the inheritance of the property, and which act entitled him to retain possession of the estate.

Again: If a person is named on the Commission of the Peace of a county, it may so happen that he may change his name, AFTER he has had the oaths administered to him under a writ of "*dedimus potestatem.*" Such oaths must

be administered before he can officially act. When the change of name is made *after* he is sworn in, there seems to be no instance of a new writ of "*dedimus potestatem*" being sued out. It is the person who has been sworn, and the mark or sound which differences him from others cannot, if it is changed, affect the oath which he has taken, —nor is a change of name a personal disqualification,—it does not terminate or suspend the duties of a magistrate. Nor does this depend on the fact whether or not the new name is licensed or unlicensed, for the publication of the new name by licence and its publication without licence are similar acts, and of equal legal force: *i.e.*, are acts of publication only. It is a known fact that some magistrates —acting as such—whose change of name was published by licence many years ago, have continued to act in their assumed names, and are still on a Commission of the Peace in their original names. If their names had been changed without licence the law affecting them would be the same. If there are any acts, either official or otherwise, which require the recognition of the names of such persons,—and all men know how many events of life require their recognition,—the recognition of such names is compulsory. For example,—official documents must be recognised. If there were no names to such documents, which in the generality of instances there must be, in order to make them valid, they might be null. Such a document may be valid when signed, and when signed it may be compulsory to obey it, and there may be an obligation on those to whom it is addressed to recognise the name of the person authorised to make the order, if it is to be obeyed.

Or again: Suppose a person who is registered as a shareholder in a company directs his name to be altered on the list of shareholders, and it is refused to recognise his new name, so that he is prevented to vote, the persons refusing to alter the name, when required to do so at the proper time, might find the refusal to be injurious to themselves. Even if the person obtained a licence to change the name, there would be no more obligation to notice it than if there were none. A licence is not alone evidence of a change of name; for, when obtained, it may be utterly disregarded, even by the person who obtains it.

When the change of name of a person, named in a Commission of the Peace, is made BEFORE a writ of "*dedimus potestatem*" has issued, it is necessary, before the writ can issue, that the new name shall appear in the Commission: *i.e.*, that the new name shall be substituted for the name already on the Commission of the Peace. If such person desires to obtain a writ he cannot compel the Lord Chancellor to correct the name on the Commission, nor could he compel the alteration to be made if he had a Royal licence to publish his change of name, or has announced the change of name in any other manner. A Royal licence imposes no penalty on any official or any other person if they should treat it as so much waste paper, though a proper deference to authority would necessarily cause it to be noticed with respect, and so far as assent to it might be necessary, it would no doubt be accepted with loyal obedience. Nevertheless, in the strict treatment of the question, it cannot be disputed that however improper the disregard of a Royal licence might be, no penalty

could be imposed on those who might attach no importance to it. In fact, the only alteration of the law, of a simple kind, which could vary the present legal effect of a change of Surname published through a Royal licence would be to give a special effect or authority, even without penalties, to a licence, by some act of legislation if any circumstances occurred to make legislation necessary. At present a licence may be disregarded on any similar occasion when a change of name without licence may be disregarded. It is, however, a source of reputation of high authority, but it is a reputation of no greater legal effect than any other reputation. Even the person who obtains the licence is under no obligation to take or to retain the name mentioned in it, and there is no penalty if any one were coarse enough or discourteous enough to call him by the name he has renounced.

The Lord Chancellor therefore, in common with others, cannot be compelled to notice the change of name when the recognition is merely *voluntary;* but it is to be presumed the only names placed on a Commission of the Peace are those of persons whose services are desired or whose authority and position are such as to make it important to associate them—sometimes even only nominally—with those who actively perform the duties of magistrates. The existence of a class of persons immediately connected with the Government in the administration of the law is useful and desirable, though all who are comprised in the class may not take part in the more active duties of their appointment. If they are proper persons to have been placed on the Commission, it is right, in the absence of all misconduct, to retain them on it, or,

if it becomes necessary to remove any name, then, according to an usage which ought always to be observed and most jealously guarded, for it preserves and sustains the independence and authority of magistrates, such a step ought not to be taken without assigning an acknowledged and sufficient cause. If there is no ground to remove a name, then there can exist no sufficient reason to disqualify the person named or to deny his title [his personal, not nominal, title], to obtain a writ of "*dedimus potestatem*" to act as a magistrate. To retain a name which is to be published and proclaimed at every Assize, and which is not the name of the person designated, and which he cannot use in the procurement of a writ, would be obviously an act of official oppression, and offensively insulting. If on account of a change of name, it is thought fit to prevent a person named in the Commission by his original name from obtaining a writ, the honourable and only dignified course of proceeding would be to allege it as an excuse—if it were a sufficient excuse—to remove the name altogether from the Commission, and to insist, if the law authorises such an assertion (which it does not), that the reputation of the performance of a legal act differs, either in law or in morals, when the publication of the act is made known through the licence of the Crown, and when it is made known through other means. Would it, however, be tolerated that a legal and innocent act, which in itself and in the manner of its performance ought not to give offence to any one, could be treated as a sufficient cause to impose a personal disqualification and to remove the name on the Commission without the substitution of the new name? If there has been no legal and no moral offence committed,

the new name ought to be recognised. It is not for officials to express their opinion of the law which permits an act to be done which is innocent, by making such act an excuse to impose penalties or personal disqualifications, or by making the retention of the original name on the Commission a means of personal insult and annoyance. If the law is disliked which allows the act to be done, let it be made restrictive, if the Legislature wills it, in whatever respect it may be advisable.

Again: "There is, it is said, no principle of law that a person occupying an official position is bound to recognise a capricious and arbitrary assumption of name by persons who have no right to them, either by descent or inheritance of property." Leave out of this proposition the harsh vituperative or objurgatory epithets, and substitute for them the more correct expressions of "legal and innocent acts," will it be said, "a person occupying an official position is not bound to recognise legal and innocent acts?" Will it be said it is excusable *to punish* men on account of such acts? But even if the objurgatory epithets are made an essential part of the proposition, it will not become valid as an expression of the law. Its defect has already been shown in noticing the class of legal decisions, of which the case of *Luscombe* v. *Yates* and *Davies*, v. *Lowndes* [1, Bingham, N. C. p. 618] are examples. If, also, a legal or innocent act is arbitrary or capricious, it is not the less innocent or the less legal. It was said by a great moralist that society approaches to a perfect state of government in the degree that penalties became needless. The Solicitor-General, however, affirms as a rule that persons in office are not bound to take notice of certain names because their recognition is not enforceable

by penalties—a rule of conduct in public affairs which would be productive of infinite evil if it were adopted.*

It has already been shown that, in law, there is no difference between the publication of the act in question through a licence, or the publication without a licence. This being so, the Solicitor-General ought—in order to be consistent—to affirm that officials are not, by law, bound to recognise any change of name, whether with or without licence—for the recognition depends on publication, and any sufficient publication has the same legal effect as a publication by licence—and there being no penalty for the non-recognition in either case, there is no legal obligation to recognise any change of name under any circumstances. If there be an obligation under any circumstances, there is a law,—and it has been already shown that there is such an obligation. If, however, it is contended that the observance of such law cannot, in certain cases, be enforced, this must not be denied. It is so. You cannot enforce it socially, and you cannot enforce it against the Lord Chancellor if he will not amend a Commission; but you can enforce it against a Lord Chancellor if there were a cause in court before him, and the question were, recognition of the act or refusal to recognise it. When he is asked to do a voluntary act he is in the position of any other person, and he may recognise the law or not; but little would be thought of the courtesy and still less of the sense of duty of an official who should frame his rule of con-

* This argument received an answer in the admirable speech of the Solicitor-General himself, delivered in the House of Commons in the case of the *Alabama*, when credit was taken for not presuming the commission of offences, and defending the recognition of apparently legal acts.

duct, not on what he would be compelled to decide, if he were asked to apply the law, but only by ascertaining whether or not any penalty would be incurred if he neglected to do what in honour he ought to do, and what, if he were sitting on the bench in the administration of the law, he would be compelled to do.

If the terms "capricious or arbitrary" could affect the question, it is to be remembered that if the donor of land chooses to attach—as a condition to his gift—the assumption of *any* Surname by the donee, this would be a lawful act; and if there were a forfeiture or limitation over by reason of non-compliance with the condition, the condition would be perfectly legal. In such a case the law would recognise the assumption of the name without a licence, unless there were a further condition that a licence should be obtained. Such a gift might be made by a deed *inter vivos* as well as by the will or settlement of a person deceased. The donor might impose on the donee not his own but *any* name. It would not be possible to exhibit any condition more capricious or arbitrary, and in this instance there would be no right to the name either by descent or inheritance of property. Nevertheless, the rules of law are such that persons occupying the official position of judges would, contrary to the opinion of the Solicitor-General, if his use of the words "official position" includes judges, be bound to recognise the change of name if any question affecting the title to the property arose in which the validity of the condition were involved.

Moreover, what is the ordinary case of a gift of land by the will or devise of a deceased person, accompanied with a

request [not enforceable], or, a condition [enforceable] to change a name but an act of caprice—or, as Lord Mansfield termed it,—"a silly condition?" [Gulliver *v.* Ashby, 4, Burrows, R. 1940], and yet, though "silly" or "capricious," judges are bound to decree the forfeiture of property if the condition, being enforceable, is not fulfilled. The caprice of the dead man must prevail—and it matters not what name *or whose family name* is imposed by the dead man on the living man—it may be his own name or the name of some other person (whose name has not been inherited or assumed by the donor or testator)—and yet the law will compel the assumption of the expressed name, or the forfeiture of the benefit conditionally conferred. What is "capricious," therefore, does not conclude the question, however distinct and absurd the caprice may be. The dead man may order that to be done, which must be enforced, and which a sense of shame or respect for the feelings of others or their censure might prevent [though the law does not prohibit], if it were done by a living person. Such is the law, and judges recognise it.

It was not badly put in the *Times*, as the Solicitor-General will admit, in Bishop Colenso's case, when a writer said: "I protest against any man being required to subject himself to pains and penalties beyond those which the Law itself enforces."

Sir George Grey said: "Mr Jones of Llanarth applied some years ago for the Royal licence to change his name to Herbert. The representatives of several noble families of that name were communicated with, and when it was ascertained that they concurred in the proposal, the Royal

licence was granted, and Mr Jones, thus authorised, assumed the name of Herbert."*

Thus the Home Secretary brought into his council all the noblemen of the same name to decide whether the Sign Manual should be attached to an act of publication to declare that a not uncommon name had been adopted by Mr Jones! In what manner were the votes taken, and could the decision have been made by a majority? Is it necessary to belong to the peerage in order to have a vote on such occasions? If a man's name is not represented in the peerage, in what manner are the voters selected or the votes taken? If a person desires to become Mr Smith, would Lord Lyveden be the protector of all the Smiths, and could he forbid the assumption of the name of that distinguished and very numerous family? Are there any

* Sir G. Grey is also reported to have said: "It is stated that Mr Herbert, of Clytha, is equally entitled to change his name; but there is this difference, that he never applied for a Royal licence." Mr Graham, the agent of the Clytha family, in a letter printed by him, says: "Not only did Mr Herbert see Sir Charles Young personally on the subject in the year 1860; but at the suggestion of Mr Herbert's solicitor, I called early in January, 1862, at the College of Arms, for information as to the mode of procedure to obtain a licence, when Mr Gibbon, the herald in attendance, answered my inquiries by saying, "that he thought as the licence had been granted to Mr Herbert's nephew (Lord Llanover's son-in-law), that precedent would be sufficient to insure a successful application to the Home Secretary on behalf of the uncle;" but Sir Charles Young being at the time in the adjoining room, Mr Gibbon mentioned to him the subject of my application, and returned, saying, "Sir Charles says it is of no use presenting a petition to the Home Secretary, for it cannot be done; a special order was given for the licence to be granted in the case of Lord Llanover's son-in-law; and at the time it was understood that it should not be a precedent for any other similar application."

other cases in which the use of the Sign Manual is put to the vote by a responsible Minister of the Crown?

The following are illustrations of some changes of name among members of the peerage:

Title.	Original Name.	Assumed Name.
SOMERSET	SEYMOUR	ST MAUR
NORTHUMBERLAND	SMITHSON	PERCY
WELLINGTON	WESLEY	WELLESLEY
LANSDOWNE	PETTY	FITZMAURICE
ANGLESEA	BAYLEY	PAGET
CONYNGHAM	BURTON	CONYNGHAM
DE TABLEY	BYRNE	WARREN
VENTRY	MULLINS	DE MOLEYNS
FRANKFORT	MORRES	DE MONTMORENCY

How were the votes taken when the last two gentlemen changed their names?

Sir G. Grey also said: "When an application is made to a Lord-Lieutenant to sanction a change of name, it is only natural he should inquire what grounds there are for the change. There must be something like usage to support the claim, or the greatest confusion would be introduced into society. For instance, in the case of wills, the question of identity might be raised. There might be some doubt as to who was the person referred to by the testator, and it would become an important inquiry how he was usually designated. As to the returns for which the hon. and learned gentleman has moved, I think it would be wrong to give the names of all the persons who have applied for leave to change their names, and whose applications have been granted or refused. As to the principles by which the Home Office has been guided in dealing with these applications, I have to inform my hon. and learned

friend that there is no written law on the subject. About 200 years ago the practice of applying for permission to change names arose, and in 1783, in consequence of the frequency of those requests, it was deemed necessary to put some check on them. A regulation was therefore made that all cases should be referred to the College of Arms. That reference is not, however, necessarily decisive, as it is intended only for the information of the Department. That usage has been universally adopted, subject to the modification introduced by Sir Robert Peel, that where there are no plausible grounds for an application, and it is obviously the mere result of whim or caprice, it should be at once declined, without any reference to the College of Arms, leaving it to the applicant to exercise the right, which the hon. and learned gentleman said all possessed, of changing his name on his own responsibility. Among others, illegitimate sons have frequently applied for leave to adopt the name of their respective fathers. Is it desirable that all these cases should be dragged before the light? Pain, I know, must sometimes be inflicted on individuals where a great public object is to be attained, but what important end is to be gained by publishing these names? There are some cases in which there could be no objection to give the names, but I do not think it is worth while to make any exceptions. I have no objection to make returns of the number of applications which have been made and of the number which have been acceded to, the difference between the numbers being of course those rejected. I am also ready to give every information as to the fees which are paid over to the fee-fund. I hope my hon. and learned friend will not press for further details, but will be content to accept the returns in this modified form."

There may be some misunderstanding of the opinion of Sir G. Grey, for surely no person applies to a Lord-Lieutenant, even indirectly, to sanction a change of Surname or to investigate the grounds for it. No such application was made to Lord Llanover: he was asked to recognise the law unconditionally. If any Lord-Lieutenant set up any claim to enter upon such investigation, it would be so unbecoming and vulgar an affectation of authority, that any person of common spirit would deride the invitation to submit to it. USAGE there can be none; neither can there be USAGE to compel any person to submit the reasons of their change of name to any public officer to investigate. There neither is, nor ought to be, any authority to compel such submission. Usage, when it prevails, affects all persons alike, but this Home Office usage has a sharp smell to discover and follow those only who have money in their pockets to extract. *Lex uno ore omnes alloquitur.* If persons do go to the Home Office in order to get the Sign Manual, and it is discovered that the change is not asked for in order to fulfil a condition connected with the enjoyment of property, then it is right they should be repelled, and that the Sign Manual of the Sovereign should not be given with a view to add an apparent Royal sanction to acts which do not require it in order to give to them legality. And what is this usage? Is it to submit to be fined? To be fined for what? To be fined in order that a fussy clerk at the Home Office shall get a needless signature. The signature when obtained has what effect? It confers no honour: it merely publishes what the applicant has chosen to do of his own accord, and when the licence does not express the grace of the Crown to relieve a person

from an onerous condition, the Home Office assumes merely the duties of a town crier. So far from a licence conferring honour, the names of some of those who have obtained such a document are concealed. It was represented it would give pain if their names were known, and that illegitimate sons have "frequently" obtained such licences, and "it was not desirable these cases should be dragged before the light." As the legal object of the licence is "publication" of the change of name, is the legal purpose of it complete if the fact of the issue of the licence is not made publicly known? Is not also the official concealment of a licence the most efficient mode of creating the very confusion of identity which Sir G. Grey deprecates.

Sir G. Grey also represented that the practice of obtaining permission to change names arose about 200 years ago, though the new names invented in that time, without permission, must bear an enormous proportion to those in which any permission to make the change was given. Still it were to be wished he had named the instances he refers to. There are cases of transfer of *coats of arms* and at the same time names of ancient date, but the arms being a personal inheritance, it was long held that a licence from the Crown was needed to transfer a *coat of arms*. If he alludes to Lord Delaware's case, that certainly is no authority in favour of his statement: it was a mere herald's question involving a claim to coat armour. If it were said, "persons ought not to be encouraged to learn to write because they might be enabled to commit forgery," the saying would be equally inconsiderate as the objection to an unlimited power to change Surnames. Secretaries of State have never been asked to obtain the Sign

Manual for the publication of names when the applicants were not well-to-do or not wealthy. The very class of persons respecting whose identity there can be no doubt, is the only class they wish to compel to come within official meshes. There has been no reason to complain that those who have changed their names without licences (not for the purpose of fraud) have either been too numerous, or so indifferent to their own interests, or to those connected with them, that any case has arisen to make an alteration of the law necessary. But even if it were so, the necessity of change of law would not authorise officials to treat as illegal what are legal acts, or to say that legal acts are not to be noticed when they, from their high seats, affect displeasure at their occurrence, or that they will invent annoyances, or pains and penalties, in order to enforce obedience to their will.

Who has been damaged in this contest? Not those who have placed their confidence in the law. It has been official authority alone that has suffered through unfounded personal pretensions to power.

And how has this question arisen? Those who have been opposed were not outcasts of society; not persons proposing to do an act in any way blameable, but gentlemen whose families are honourably known, and who, under our social system, which to foreigners is constantly unintelligible, are, in their rank of society, on a perfect footing of equality with those who are known by the highest titles. What pretence was there to attempt to punish these gentlemen? What reason was there to invent new rules of official morality, and to lay down as a principle that the vast class of human actions which may lawfully be done are not to be officially recognised [though the non-recognition of some

such acts might excusably be exceptionable] until some law officers of the Crown have completed, and the legislature has sanctioned, an enormous catalogue of penalties to enforce their recognition? What was there to provoke these attacks on public morals which recognise as lawful all that is innocent, and to seek to undermine principles which largely contribute in their observance to the happiness of society? The acts, in the cases in question, were not condemned; it was their lawful performance without the payment of fees, or official leave, which caused offence.

The course to be pursued by officials when they possess a discretionary authority ought not to be to resort to excuses, in the exercise of any discretion, founded on extreme or rare or improbable cases. All power is capable of abuse, and if the possibility of abuse were always to be a sufficient hindrance to its existence, no power, however necessary for the most beneficial purposes, could be conferred upon any person, though indispensable for the promotion of the comfort and contentment of a community.

It may be repeated—"That it is of no importance to the public what name a private person assumes; but it is important to every one that a law which may contribute to the happiness and interests of many persons shall not be disregarded by officials; that personal disqualifications shall not be imposed by the mere authority of officials on account of legal and innocent acts; that pecuniary demands in the shape of fees shall not be enforced by mere official authority on account of the performance of a lawful act; and that conditions unknown to the law shall not be imposed on those who may ask for the issue of writs to enable them to perform public duties."

Sicut in initio nominis, cognominis, praenominis recognoscendi singulos impositio libera est privatis, ita eorum mutatio innocentibus periculosa non est. Mutare itaque Nomen, vel praenomen sive cognomen, SINE ALIQUA FRAUDE LICITO JURE, *si liber es, secundum ea, quae saepe statuta sunt, minime prohiberis: nullo ex hoc praejudicio futuro.*—Cod. Lib. ix, Tit. 25.

In similar terms the Lord Chancellor will express the law whenever he may be required to declare it.

APPENDIX.

TO THE EDITOR OF THE 'TIMES.'

SIR,—The debate of last night on this subject must have effectually dispelled the notion which has led Lord Llanover so widely astray, that the Queen either claims or exercises any especial prerogative whatever connected with the subject of change of Surname; or that a Royal licence is anything more than the recognition in the highest quarter of a voluntary act already accomplished. Its recipient is not even compelled to bear for a day the Surname which it authorises him to assume; *nor are other people enjoined by it to recognise him by that name, if they are not inclined to do so.* The case of the Right Hon. R. C. Dundas, who in 1836 obtained a Royal licence, in compliance with the conditions of a will by which he inherited a considerable estate, to bear the name of Christopher *only*, and who, in spite of that licence and without either procuring its revocation or obtaining the grant of a fresh one, has since sat in Parliament under the Surname of Nisbet, and who now bears the Surname of Hamilton, assumed *proprio motu*, completely establishes this point.

It would have been very convenient for the public if Mr Roebuck could have prevailed on Sir George Grey to grant a return of the rules by which the Home Office is guided in conceding and in withholding Royal licences for change of name. There exists, however, one serious obstacle to the preparation of such a return, and that is that the Home Office, from time immemorial, has been guided on that point by no fixed rules or principles whatever, and that Royal licences have always been granted and withheld by the Home Secretary according to the influence possessed by and the pressure exercised in favour of those who applied for them.

Sir George Grey stated, however, that a rule had been laid down by the late Sir Robert Peel that where the application for a Royal licence appeared to be based on trifling or capricious grounds it should invariably be refused. Now Sir Robert Peel died in 1850. I find that in that year a gentleman named

Laurie obtained two Royal licences to change his name; first to Northdale, and then to Nuthall, "in compliance with the will of the late Catherine Jack, spinster, of Sloane street." In 1851 a lady named Braham was permitted by Royal licence to assume the name of Medows, on the plea that she was "the co-heiress expectant" of her aged grandmother, who was so called. In 1852 a gentleman named Rust was granted a Royal licence to assume his wife's maiden name, D'Eye, "out of respect to her memory." In 1853 a Mr Penny was allowed to assume the name of Harwood, "by wish of his mother, out of respect to his grandmother." In 1854 Thomas Clugas, of Guernsey, was permitted by Royal licence "to use his paternal name of Clucas." In 1855 a Miss Galston was allowed to assume the name of Stepney, "out of respect to her maternal ancestors in general."

It is difficult to conceive more trifling grounds than those on Royal licences have been granted in the above-quoted instances. And there is another class of applicants towards whom, according to Sir George Grey, the Home Office perversely shows especial indulgence—the reputed fathers of illegitimate children. These erring persons are freely permitted, if they please, to confer their family names upon any or upon all of their reputed offspring, while the unhappy results of their profligacy are treated with no such lenity; for if an illegitimate son applies for a Royal licence to assume the name of his reputed father he has no chance of obtaining it, unless his parent concurs in the application. The *London Gazette* furnishes abundant instances of the injustice thus perpetrated in her Majesty's name in favour of the fornicator, and to the detriment of his victims; but for obvious reasons I forbear to quote them.

Mr Roebuck cited last night the case of Sir John Jones, K.C.B., who commanded with the greatest distinction the 60th Regiment during the late mutiny in India. It seems that that gallant officer is the son of a Mr St Paul, that he is now desirous of assuming his father's name, having hitherto, for some unexplained reason, borne the name of Jones. This he has a perfect right to do if he pleases; but the official authorities, as usual, are determined to throw every possible obstacle in his way, and so, having entered the army as "Jones," Jones he must remain, for the War Minister will not allow his name to be changed from Jones to St Paul in the *Army List*.

Yet, in 1840 we find, by the April *Army List*, that Lieutenant-Colonel Benjamin Badcock was in command of the 15th Hussars, while in the *Army List* of the following month Lieutenant-Colonel Benjamin Lovell is recorded as being the commanding officer of that corps. The *London Gazette* of the same date thus explains the discrepancy:

"The Queen has been pleased to grant unto Benjamin Badcock, Esq., a lieutenant-colonel in the army, commanding the 15th Hussars, her Royal licence and authority that he and all his issue respectively may (from respect and affection for the memory of his ancestor, Sir Salathiel Lovell, Knight, some time one of the Barons of the Court of Exchequer) take and bear the name of Lovell in lieu of his present name."

It may not be amiss to add, in corroboration of the plea thus successfully urged by Colonel Badcock for obtaining a Royal licence to change his name, that Sir Salathiel Lovell, for whom he professed to entertain such singular affection and respect, had died exactly 127 years before his descendant bethought him of adopting his name.

Had Colonel Badcock, like Mr Buggy, of Bedford, asked for a licence to change his name because he considered it an unpleasant one, his claim would have been rejected as trifling and frivolous. But when he based his application on his respect and affection for the memory of one of Queen Anne's Barons of the Exchequer no resistance appears to have been made to such a claim.

It seems hard, however, after this Badcock-Lovell case, to see how Sir John Jones can fairly be debarred from assuming his paternal name of St Paul on the frivolous plea that it is too much trouble to record the change of name in the *Army List*, which is reprinted and re-corrected every month in the year. I may as well add to my list of instances of the anomalous conduct of the Home Office on the subject of Royal licences the case of the Right Hon. the Chancellor of the Exchequer. Sir Bernard Burke records in his 'Peerage and Baronetage,' under the head of "Sir John Gladstone," that in 1836 Mr Gladstone and all his family, whose real name up to that time had been Gladstones, applied for and obtained a Royal licence "to drop the final 's' in their names." No reason was assigned for this singular step, nor was the concession of the licence ever published in the *Gazette*.

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I am, Sir, your obedient servant,

March 19. COMMON SENSE.

Sir John Jones served the campaign of 1857-58 against the

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* The name of "My Lord Doctor Mr John Gladstanes" appears on the roll of Judges of the Court of Session of Scotland in the year 1542.

mutineers in India; commanded the 1st Battalion 60th Rifles at the actions on the Hindun of May 30th and 31st, battle of Budlee ke Serai and forcing the heights before Delhi on June 8th, throughout the siege operations before Delhi, action of June 19th, attack on the Subzee Mundi on July 13th (commanded column of attack), and covering the assaulting columns at the storming of the city on September 14th. Commanded the left attacking column within the city from 15th to 20th September, forced through the city, blew open the gates, and took possession of the palace on September 20th, 1857. Commanded as Brigadier-General the Roorkee Field Force throughout the operations in Rohilcund from April 17th to June 20th, 1858, including the actions of Bugawalla and Nugena, relief of Moradabad, action on the Dojura, assault and capture of Bareilly, attack and bombardment of Shahjehanpore, defeat of the rebels and relief of the garrison, capture of the fort of Bunnai, pursuit of the enemy to the left bank of the Goomtee, and destruction of the fort of Mahomdee, commanded the Battalion at the action of Pusgaon. Received the thanks of General Wilson, of Lord Clyde, and of the Governor-General in Council (C.B., Colonel for distinguished service in the field, good-service pension, K.C.B., and medal and clasp).

A writer in the *Times*, March 22, 1863, after recounting his great services, added "that during the command of Sir John Jones, the lives of hundreds rested upon his word; but not a syllable was ever breathed against his humanity, and he ever tempered justice with mercy."

TO THE EDITOR OF THE 'TIMES.'

SIR,—A correspondent in your impression of this day, signing himself "Justitia," after recapitulating the good services of Sir John Jones, describes that gallant officer as "one whom it delights the Minister of War to insult."

The supposed insult consists in the fact that Sir John Jones is desirous, for family reasons, with which the public have no concern, to assume his father's name, "St Paul;" and that, being an officer in the army, he cannot conveniently do so unless the Minister of War will permit his name to be changed in the *Army List*—a step which Sir George Lewis declines to sanction, unless Sir John applies for, obtains, and pays for a Royal licence.

Were Sir John an attorney, the Lord Chief Justice would at once allow his name to be altered on the Rolls of the Court of Queen's Bench; were he a private individual, he could legally effect the change which he desires to accomplish by public deed

and advertisement; but as he is merely a very distinguished officer in the army, and he is at the mercy of the Minister of War, who can thus thwart him if he considers it worth his while to do so.

It is *absurd to suppose that Sir George Lewis is actuated by any desire to insult* Sir John Jones by declining to accede to his wish. All that Sir George means is, that the existing state of the law affecting changes of name is, in his opinion, unsatisfactory; that he conceives it ought to be more closely defined and regulated; and that he is therefore determined to offer to its operation all the opposition which his high official position places at his command.

But Sir George appears to forget that, in acting thus, he is setting a very evil example. A statesman who is War Minister, and who has been Home Secretary, ought surely to stand up for a strict observance of the laws of the land as they are. If he considers them defective, *his high position and his great experience render him peculiarly well qualified to bring about their amendment;* while Sir John Jones, an officer of fortune, has no such advantages, and can only avail himself of them as they stand, which is all he is seeking to do.

Sir John may not have 100*l.* or 150*l.* to throw away in fees to the Home Office and the Herald's College; his case possibly may not come within the imaginary rules by which the Home Office pretends to be guided in granting Royal licences for change of name; nevertheless, he may have urgent reasons for adopting the avowedly legal step which he seeks to take. Why, therefore, should he be thus vexatiously thwarted? Why should the Minister of War unnecessarily throw any official impediments in his way. What good end does he attain by doing so?

We have seen that the Right Hon. R. A. C. D. N. Hamilton has been allowed to assume at least two of his numerous Surnames without obtaining any licence, paying any fees, or being subjected to any official annoyance; and Mr Hamilton is a Deputy-Lieutenant, a Privy Councillor, and a county magistrate.* Another instance, equally salient, has recently come to my knowledge, of change of name without Royal licence and without official persecution.

In 1847 Mr James Robert Hope, the eminent counsel, assumed the name of Scott, and as Mr Hope Scott, Q.C., he has since become the son-in-law of the late, and the brother-in-law of the

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* It has been stated that a Herald's licence from the office of the Lord Lyon in Scotland was obtained; but such a licence would not be a Sign Manual, nor liable to the duty on licences under the Sign Manual.

present Earl Marshal of England. The Earl Marshal is the hereditary head of the Herald's College, and as such appoints all the officers of that body, the very one to whom the Home Office refers all applicants for Royal licences, in order that their reasons for changing their names may be investigated and approved; and here we actually have the Earl Marshal's own son and brother-in-law dispensing with the costly and capricious luxury of Royal licence, and without troubling the Herald's Office at all. * * *

When Mr Hope Scott applied in 1853 to the Bank of England to alter his original name, as a holder of stock under a deed of trust, to that which he had thus assumed, his request was at once granted, under an affidavit from one of the clerks of Messrs Coutts, that James Robert Hope Scott was the person described in the bank books as James Robert Hope; the other parties in the trust deed joining with Mr Hope Scott in the request that such change might be made.

If the Bank of England can deal thus simply with such a simple matter, why cannot the War Office?

March 25. COMMON SENSE.

Paul II, described as "*superbus et literarum osor*," and who boasted that "*omnia jura in scrinio pectoris sui recondita esse*," is said to have held the opinion, that all persons who assumed names had some bad design, and he imprisoned several persons in order to discover the cause. He subjected Platina, the author of the 'Lives of the Popes' [who died in 1481] to a severe confinement, and to be put upon the rack and tortured.—"Pomponio was at this time brought from Venice. Being examined why he changed the names of men to whom he wrote, he answered boldly, as his humour was, that *it did not concern either his judges, or the Pope, under what name he pleased to go, so that he had no bad end in it*; for that out of respect to antiquity he was wont to make use of many ancient names as spurs to stimulate the modern youth to virtuous emulation." [See *Platina's Lives of the Popes, by Paul Rycaut*, pp. 409, 411, and 412]. Pope Sixtus II endeavoured to repair the wrong done to Platina, and placed him in charge of the library of the Vatican.

A change of name is not so important an act as that of marriage, but if a registration of changes of names is desirable—and it may be—let mere changes of name be recorded in the same way and on similar terms as the usual entries in the books of

Registration Offices; but without a law to control it, the will of officials must become oppressive even in these matters.

From the 'SATURDAY REVIEW,' *March* 21, 1863.

LORD LLANOVER AND MR HERBERT.

The great controversy between Lord Llanover and Mr Herbert of Clytha approaches its termination. The martyr of Monmouthshire has established, in defiance of his persecutor, the right which Englishmen are commonly supposed to enjoy, of pleasing themselves in all things which are not forbidden by the law of the land. The Senator charged with the administration of the Department of Monmouth has been disappointed in his hope of referring the dispute to that august body to which he announces that he is, as Lord-Lieutenant, exclusively responsible. The House of Lords, though probably sensible of the honour which it derives from the presence of one of its most recent members, is not disposed to concern itself with his little county squabbles. Although titled families have indulged more freely than commoners in ornamental changes of name, the Peers in general may probably object to the discovery that every upstart has the power of calling himself Stanley or Howard; and unless Lord Llanover himself originates the discussion, he may perhaps never find an opportunity of apologising for his vexatious misuse of local authority. Nevertheless, Mr Roebuck judged rightly in calling on the House of Commons to declare that, in great matters or small, executive functionaries *have nothing to do with the law but to obey it.* The office of Lord-Lieutenant is in itself sufficiently invidious, and it is intolerable that the dispenser of county patronage should claim to impose arbitrary conditions on the appointment to those offices which are customarily and usefully occupied by country gentlemen. Another petty magnate might refuse to allow the wearers of beards admission into the county militia or magistracy. Nothing is more odious to Englishmen than interference with their private affairs under colour of official authority. The only excuse for Lord Llanover's absurd proceeding is the natural reaction which must ensue on the recovery of personal independence after several years of obedience to the dictation of a Marylebone vestry. Mr Dickens's misanthrope retired to a turnpike gate, that he might avenge himself on mankind by taking the tolls. Lord Llanover retaliates on the race to which his former constituents belonged by making himself disagreeable to the quiet denizens of Monmouthshire.

The law, or absence of law, affecting Surnames was correctly laid down by Mr Roebuck, and it was not afterwards disputed.

Colonel Clifford, on behalf of his friend, was obliged to confine himself to the conventional fallacy, that Lord Llanover was *incapable of acting except from the most elevated motives.* It might have been replied that, when inconsiderable persons commit a wrongful act, the preliminary operations of their minds are not an interesting subject of inquiry. Lord-Lieutenants are supposed to know the law, as far as it concerns their limited functions; and if they use their power oppressively, the goodness of their intentions constitutes but a frivolous defence. Sir George Grey added the questional proposition that, even if Mr Herbert had been ill-treated, Lord Llanover was not necessarily to blame. It is difficult to deal with the paradox that misconduct may be innocent in a public functionary, and it may be assumed that Sir G. Grey himself merely intended to imply that Lord Llanover's error was comparatively venial. It is certainly not probable that the Crown will be asked by address to dismiss the Lord-Lieutenant of Monmouthshire, merely because he talked a certain amount of nonsense, and inflicted a temporary annoyance on a respectable private gentleman. Sir G. Grey's opinion, which is more important than Lord Llanover's conduct, *has the defect of being wholly unintelligible.* He seems still to adhere to his strange theory, that Surnames can only be assumed for the first time after they have become familiar by long usage. The objection to changes of name which is founded *on possible doubts as to identity* is altogether irrelevant. Although any intelligible designation is sufficient for legal purposes, it is conceivable that a change of name, by creating an uncertainty, might invalidate a bequest; but if any person thinks fit to risk so remote an inconvenience, it is not the business of the general or local Government to protect him by precautionary restraint against the contingent results of his own temerity.

It is fully time to terminate the imaginary despotism of the Home Office, if Sir G. Grey correctly represents its mode of proceeding. It seems that, when Mr Jones of Llanarth first applied for a licence to change his name, application was made to the noble families which bear the name of Herbert; and, as they offered no objection, the claim was allowed, in deference—as one of the officers of the College perhaps erroneously stated—*to the interest of Lord Llanover.* If the families of Powis of Pembroke and of Carnarvon had been illiberally disposed to the House of Llanarth, it seems that they would have been allowed a negative voice in the official decision; yet Mr Jones would have had the same pedigree, the same pretensions to the name of Herbert, and even the same influential connexion. Sir G. Grey *appears to have been oddly unconscious of the impropriety of the course which he attributes to the department.* Although he asserts that frivo-

lous reasons for change of name have not been accepted as sufficient, every person is familiar with instances of new names which have been adopted simply because they were considered euphonious or aristocratic. Lord Llanover's colleague in promotion to the Upper House has discarded for his descendants the not uncommon Surname of Smith, which he still combines with his title. The more ancient houses of Wesley and Seymour changed their names without Royal licence—in one case from a dislike to Methodistical associations, and in the other from simple bad taste.

The Solicitor-General, agreeing with Mr Roebuck that a Surname was virtually equivalent to a nickname, remarked, less appositely than truly, that although a man has a right to assume a name, he cannot force his neighbour to use it. If the argument was intended to apply to the grievance under discussion, Mr Herbert might have asked, in a new sense, the ancient question, "Who is my neighbour?" A cynic would have answered that a neighbour is a person who has the opportunity of committing unneighbourly acts. Inasmuch as the two estates are in the same county, and even in the same district, the owner of Llanover is a neighbour of the owner of Clytha, and he may treat him as rudely as he thinks fit. No man can compel his neighbour to return his salutation, or to abstain from disagreeable subjects of conversation. If he meets with discourtesy, he relieves himself from further vexation by discontinuing the acquaintance. In modern England, custom would not sanction the officious message which Touchstone sent to a certain courtier, that the cut of his beard did not please him. The courtier bluntly replied, that he cut his beard to please himself; and if the objection had applied to his name, he would probably have returned a similar answer. A Lord-Lieutenant is scarcely, in the same sense, neighbour to a candidate for a commission in the Militia. If he officially objects to a name, it is useless to reply that there was no thought of pleasing him when the name was taken, for he has absolute power to give or to withhold the coveted promotion. It is needless to say that those who exercise the prerogative of the Crown are, above all things, bound to avoid undue favour or prejudice. The Solicitor-General would scarcely maintain that the right to change a name depends on Lord Llanover's taste or fancy. In private life, it is easy enough to deal with the ill-bred perversity which refuses the ordinary courtesies of society, but *against official ill-nature the protection of Parliament may be properly invoked.*

The Lord-Lieutenant of Monmouthshire has probably at last discontinued his crusade against the unlicensed assumption of the name of Herbert. It appears that the new designation appeared

in a Commission of Sewers for the county, issued under the Great Seal, and the Lord Chancellor decided that the Crown was bound by its own act, and that the disputed name was therefore finally legalized. It is, perhaps, not in the nature of English controversies *to be settled on their merits.* The Lord Chancellor, in the midst of more important business, had inadvertently countenanced Lord Llanover's blunder, and it was scarcely worth his while to correct the mistake, although *he has contrived to repair the injury* which it involved. The irritation which has been caused by the proceeding was legitimately directed against the supposed author of the articles in the Monmouthshire papers, and against the undoubted promoter of the unnecessary disturbance. * * * * * The gratuitous absurdity of appealing to the House of Lords in a matter wholly within the competence of the Crown completes Lord Llanover's claim to what may perhaps be thought an excessive share of public attention.

GWELL GWISGO NA LLYNGCU'R GENYNEN.

ERRATA.

In the original Essay:

P. 3, l. 1, for "by" read "against."
P. 7, l. 12, read "2, Brown, Par. Ca. 272."
P. 62, l. 2, for "Commission" read "permission."
P. 71, l. 2, for "27" read "57."

NOTE.—It seems that 398 persons, since 1850, on their change of name, obtained Licences from the Home Office.

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